



7020-02

## **INTERNATIONAL TRADE COMMISSION**

**[Investigation No. 337-TA-792]**

### **Certain Static Random Access Memories and Products Containing Same**

### **Commission Determination to Review in Part a Final Initial Determination Finding No Violation of Section 337**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review in part the remand initial determination (“RID”) issued by the presiding administrative law judge (“ALJ”) on February 25, 2013.

**FOR FURTHER INFORMATION CONTACT:** Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on July 28, 2011, based on a complaint filed by Cypress Semiconductor Corporation of San Jose, California (“Cypress”). 76 FR 45295 (July 28, 2011). The complaint alleged violations of

section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain static random access memories and products containing the same by reason of infringement of various claims of United States Patent Nos. 6,534,805; 6,651,134; 6,262,937 and 7,142,477. The notice of investigation named the following entities as respondents: GSI Technology, Inc. of Sunnyvale, California (“GSI”); Alcatel-Lucent of Paris, France (“Alcatel-Lucent”); Alcatel-Lucent USA, Inc. of Murray Hill, New Jersey (“Alcatel-Lucent USA”); Telefonaktiebolaget LM Ericsson of Stockholm, Sweden (“Ericsson LM”); Ericsson, Inc. of Plano, Texas (“Ericsson”); Motorola Solutions, Inc. of Schaumburg, Illinois (“Motorola”); Motorola Mobility, Inc. of Libertyville, Illinois (“MMI”); Arrow Electronics, Inc. of Melville, New York (“Arrow”); Nu Horizons Electronics Corp. of Melville, New York (“Nu Horizons”); Cisco Systems, Inc. of San Jose, California (“Cisco”); Hewlett Packard Company/Tipping Point of Palo Alto, California (“HP”); Avnet, Inc. of Phoenix, Arizona (“Avnet”); Nokia Siemens Networks US, LLC of Irving, Texas (“Nokia US”); Nokia Siemens Networks B.V. of Zoetermeer, Netherlands (“Nokia”); and Tellabs of Naperville, Illinois (“Tellabs”). The Office of Unfair Import Investigations is not a party to this investigation.

The following respondents were terminated from the investigation based on settlement agreements, consent orders, or withdrawal of allegations from the complaint: Alcatel-Lucent, Alcatel-Lucent USA, Ericsson, Arrow, Nu Horizons, Nokia US, and Nokia. The following respondents were terminated from the investigation based upon grant of summary determination of no violation of section 337: MMI, HP, Motorola, Tellabs, and Ericsson LM. The following respondents remain in the investigation: GSI, Cisco, and Avnet (collectively, “Respondents”).

On October 25, 2012, the ALJ issued his final ID (“ID”), finding no violation of section 337 by the remaining respondents. Specifically, the ALJ found that the Commission has subject matter jurisdiction, *in rem* jurisdiction over the accused products, and *in personam* jurisdiction over the Respondents. ID at 8. The ALJ also found that the importation requirement of section 337 (19 U.S.C. § 1337(a)(1)(B)) has been satisfied. *Id.* The ALJ, however, found that the accused products do not infringe the asserted patent claims. *See* ID at 16, 24, 39, and 55. The ALJ also found that Cypress failed to establish the existence of a domestic industry that practices the asserted patents under 19 U.S.C. § 1337(a)(2) for failure to establish the technical prong of the domestic industry requirement. *See* ID at 20, 31, 45, and 58. The ALJ did not consider the validity or enforceability of the asserted patents despite Respondents’ assertion in both their pre-hearing and post-hearing briefs that the asserted patents are invalid and unenforceable. *See* ID at 20, 31, 45-46, and 59.

On November 7, 2012, Cypress filed a petition for review of the ID. That same day, Respondents filed a contingent petition for review. On November 15, 2012, the parties filed responses to the petition and contingent petition for review.

On December 21, 2012, the Commission determined to review the ID in its entirety (without requesting further briefing) and remanded the investigation to the ALJ to make findings on invalidity and unenforceability, issues he did not rule on. On February 25, 2012, the ALJ issued his RID, finding that the asserted patents are enforceable and not invalid.

On March 11, 2013, Respondents filed a petition for review of the RID, challenging the ALJ’s findings that the asserted patents are enforceable and not invalid. On March 19, 2013, Cypress filed a response to the petition for review.

Having examined the record of this investigation, including the ALJ's final ID and RID, the petitions for review, and the responses thereto, the Commission has determined to review the RID in part, *i.e.*, with respect to validity. The final ID remains under Commission review.

The Commission declines Respondents' request to take judicial review of the on-going reexamination proceedings at the United States Patent and Trademark Office regarding the '805 patent and admit filings in that case into evidence in this investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in sections 210.42-46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42-46 and 210.50).

By order of the Commission.

Lisa R. Barton  
Acting Secretary to the Commission

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